

Presents

The Sun Sets on Shea and Rises on Sandler

2014 – 2015 Case Law Review

Steve Carey, Esq.



The Sun Sets on Shea

2005 - 2014



BENEFITS



BENEFITS

Nelson v. Montana Schools Group Insurance Authority, 2014 MTWCC 15 (Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** After reaching MMI and being told by Respondent that all further treatment had to be preauthorized, Petitioner traveled to California in 2011 and 2012 for office visits with her surgeon without getting preauthorization. Respondent denies liability for the office visits and travel expenses because Petitioner failed to obtain preauthorization and failed to timely submit her travel expenses. Petitioner demands the ongoing right to see her California surgeon, and Respondent counters that it has not categorically denied Petitioner future treatment with her California surgeon; only that it reserves the right to determine if further treatment in California is medically necessary. Petitioner argues the Petition for Hearing was timely filed, while Respondent claims the petition is barred by the statute of limitations. Respondent denies liability for Petitioner's costs, attorney fees, and a penalty.
- **Held:** Petitioner is not entitled to payment for the office visits to see her California surgeon in 2011 and 2012, and is not entitled to reimbursement for her travel. Petitioner was informed after reaching MMI that further treatment needed to be preauthorized. Petitioner failed to seek preauthorization, and failed to timely submit her travel receipts despite knowing the rules regarding travel reimbursement. Petitioner has the right to see her California surgeon in the future provided the treatment is medically necessary and related to her claim. The Petition for Hearing is not barred by the statute of limitations. Petitioner is not entitled to her attorney fees, costs, or a penalty.

BENEFITS

A.R.M. 24.29.1517(5). Prior Authorizations for Certain Services.

(5) Prior authorization is required when:

- (a) the provider to whom the referral is made is a consulting specialist; or
- (b) there is a request for change of treating physician; or
- (c) the claimant has not been treated for the injury (or occupational disease) within the past six months; or
- (d) the claimant has been identified as having reached maximum medical improvement; or . . .

BENEFITS/DISABILITY

Gray v. Montana State Fund, 2014 MTWCC 2

(Order Denying Petitioner's Motion for Summary Judgment)

- **Summary:** Petitioner began receiving social security retirement benefits at age 62, but continued to work. He subsequently suffered an industrial injury for which he has reached MMI. Petitioner contends that he only received “partial” social security benefits and that he is entitled to PTD benefits until he reaches the age of “full retirement.” Respondent contends that Petitioner is considered “retired” under § 39-71-710, MCA, and that he is therefore ineligible for PTD benefits.
- **Held:** Section 39-71-710, MCA, provides that injured workers are considered retired if they receive social security retirement benefits or if they are eligible to receive full social security retirement benefits. This provision of the statute is framed in the disjunctive. Under the terms of this statute, if an injured worker is either eligible to receive full social security retirement benefits or actually receives social security retirement benefits in any amount, the worker is considered retired. Since Petitioner received social security retirement benefits, even though they are not “full” benefits, he fulfills the requirements of the statute and is considered “retired.” He is therefore not eligible for PTD benefits.



BENEFITS/DISABILITY

Gray v. Montana State Fund, 2014 MTWCC 2

Montana Code Annotated § 39-71-710:

Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

BENEFITS/DISABILITY

Davidson v. Benefis, 2014 MTWCC 18

(Findings of Fact, Conclusions of Law, and Judgment)

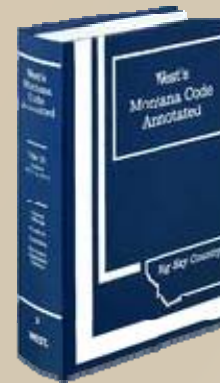
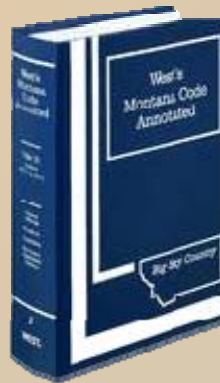
- **Summary:** Petitioner argued that her preexisting lower extremity impairment combined with her industrial injury resulted in an actual wage loss, entitling her to PPD benefits. Respondent countered that Petitioner resigned her CNA position, and that her preexisting permanent impairment was unrelated to her industrial accident, giving her no right to PPD benefits.
- **Held:** Section 39-71-703(1), MCA (2009), did not require that a permanent impairment be a direct result of the industrial injury. Petitioner was forced to resign because she could not return to her time-of-injury job due to a combination of her preexisting permanent impairment and her industrial injury. Therefore, Petitioner had an actual wage loss under the pre-2011 PPD statutes, entitling her to PPD benefits.

BENEFITS/DISABILITY

Montana Code Annotated § 39-71-703

(1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and



BURDEN OF PROOF

A serene sunset scene over a calm body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange near the horizon. In the distance, dark silhouettes of land or islands are visible against the horizon line. The overall mood is peaceful and contemplative.

BURDEN OF PROOF

Myles v. Sparta Insurance Company, 2014 MTWCC 19

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner claims he injured his right hip at work when he stepped up onto a semi-truck. Respondent counters that Petitioner failed to prove that it is more probable than not he suffered a hip injury at work.
- **Held:** The evidence supports Petitioner's contention that he suffered a torn labrum in his right-hip socket at work. He is therefore entitled to coverage for treatment of his right-hip condition.

BURDEN OF PROOF/BENEFITS/PENALTIES

Starkey v. ACE American Insurance Company, 2014 MTWCC 6

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner alleges she injured her right foot in the course and scope of her employment with Shopko Stores in Valley County, Montana, and that she is entitled to medical and wage-loss benefits, attorney fees, and a penalty. Respondent argues that Petitioner's foot injury was incurred prior to the day she claimed she injured it at work and that she is not entitled to workers' compensation benefits.
- **Held:** No legal dispute is involved in this matter as it is essentially a fact issue that hinges on witness credibility. The Court concluded Petitioner suffered a right-foot injury in the course and scope of her employment and is therefore entitled to medical benefits. However, the record reflects that Petitioner continued to work in her time-of-injury position until she voluntarily left to move out of state, so she is not entitled to wage-loss benefits. As Respondent did not act unreasonably in denying Petitioner's claim, Petitioner is not entitled to attorney fees, or a penalty.



BURDEN OF PROOF/CREDIBILITY

Rushford v. Montana Contractor Compensation Fund, 2014 MTWCC 16 (Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** In October 2007, Petitioner became ill after inhaling paint and diesel exhaust fumes while working as a carpenter. Petitioner's condition did not improve and he was eventually diagnosed with RADS. Petitioner contends that he is permanently totally disabled and that he is entitled to retroactive TTD benefits. Petitioner further contends that Respondent should be liable for ongoing coverage for the medical treatment recommended by his treating physician, including a referral to a neurologist. Petitioner further contends that he is entitled to his attorney fees, costs, and a penalty. Respondent denies that it has any further liability in this matter. It contends that Petitioner does not have RADS, has suffered no ongoing effects from his industrial injury, and that Petitioner is not permanently totally disabled.
- **Held:** The Court found Petitioner's subjective reports of his disability to be wholly lacking in credibility, and the Court further found that Petitioner misrepresented his condition to his medical providers. Based on the evidence presented, the Court concluded that Petitioner is not permanently totally disabled and is not entitled to retroactive TTD benefits. The Court further concluded that Petitioner is not entitled to receive ongoing treatment as recommended by his treating physician, as his current condition is not related to his industrial injury. The Court concluded that Respondent is not liable for the referral to a neurologist recommended by Petitioner's treating physician. The Court further concluded that Petitioner is not entitled to his attorney fees, costs, or a penalty.

BURDEN OF PROOF/DISABILITY

Thompson v. Montana State Fund, 2013 MTWCC 25

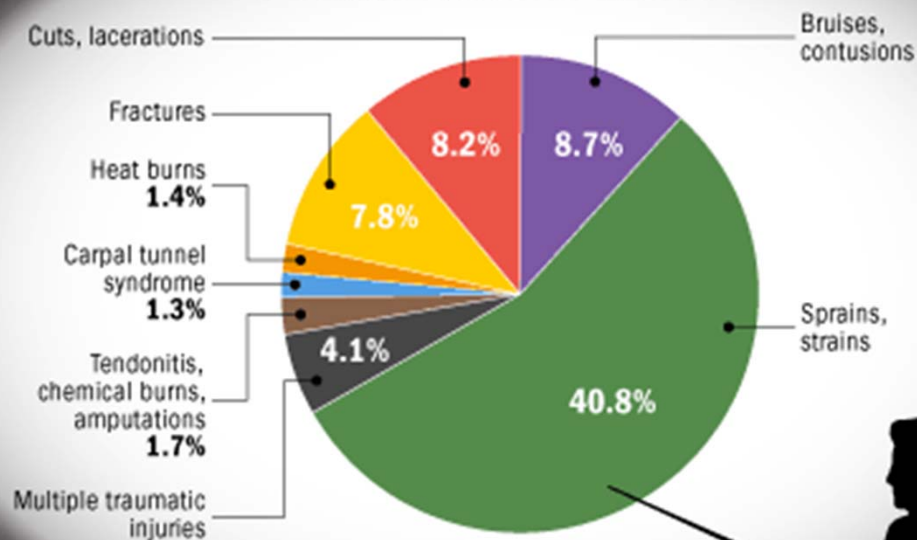
(Findings of Fact, Conclusions of Law and Judgment)

- **Summary:** Petitioner alleges she is permanently and totally disabled as a result of an occupational disease affecting her right wrist, cervical spine, and right vocal cord that impairs her ability to speak audibly. Respondent counters that Petitioner has jobs approved for her by her treating physician and is therefore employable and not totally disabled.
- **Held:** Petitioner's job approvals were inconsistent with her physical limitations and vocal impairment which renders her unable to speak above a whisper. Given the totality of Petitioner's condition, she does not have a reasonable prospect of employment, and is therefore permanently and totally disabled.

How Workers Compensation Works

©2007 HowStuffWorks

NON-FATAL OCCUPATIONAL INJURIES IN PRIVATE INDUSTRY IN 2005



Source: U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies

BURDEN OF PROOF/MAJOR CONTRIBUTING CAUSE

Boland v. Montana State Fund, 2014 MTWCC 8

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner suffered an industrial injury in November 2007. He then worked as a janitor from February to May of 2010. In 2011, he worked part-time for the employer with whom he suffered the November 2007 industrial injury. In January 2012, he suffered a non-work-related fall for which he sought chiropractic treatment. In July 2012, he filed an occupational disease claim, alleging that the janitorial work permanently aggravated his pre-existing condition. Respondent denied the claim, arguing that Petitioner's claim was untimely, that he was last injuriously exposed to the conditions which gave rise to his occupational disease at a subsequent employer, and that the non-work-related fall severed liability.
- **Held:** Petitioner has not met his burden of proving that the janitorial work he performed in 2010 is the major contributing cause of his condition. The Court did not reach the issue of the timeliness of his claim.

BURDEN OF PROOF / PENALTIES

Engle v. Hartford Underwriters Ins. Co., 2013 MTWCC 27 (Findings of Fact, Conclusions of Law and Judgment)

- **Summary:** After Respondent denied further benefits for Petitioner's accepted occupational disease claim, Petitioner petitioned the Court, arguing that her ongoing problems with her left elbow are caused by her occupational disease and that Respondent cannot now deny liability. Petitioner further argued that Respondent unreasonably denied her further benefit.
- **Held:** Petitioner did not suffer a new injury which would sever Respondent's liability under § 39-71-407(5), MCA. It was unreasonable for Respondent to refuse to pay further benefits to Petitioner on this theory without any evidence to support its position and Petitioner is therefore entitled to a penalty and her attorney fees. Respondent has not proven that Petitioner's current elbow condition is unrelated to her occupational disease claim and therefore it remains liable for her condition.

DISCOVERY



DISCOVERY/IMEs

Vulk v. Employers Compensation Ins. Co., 2014 MTWCC 13

(Order Granting Respondent's Motion to Compel and Granting in Part and Denying in Part Respondent's Motion for a Protective Order)

- **Summary:** Respondent moved to compel Petitioner to respond to two discovery requests to which Petitioner had objected on the grounds of work-product privilege. Respondent further moved for a protective order to bar Petitioner from seeking certain information relating to the physician who performed an IME of Petitioner at Respondent's request. Petitioner opposed Respondent's motions.
- **Held:** Respondent's motion to compel is granted. Respondent's motion for a protective order is granted in part and denied in part, consistent with the holdings of *Fjelstad v. Fireman's Fund* and *Hegwood v. Montana Fourth Judicial Dist. Court*.



A serene sunset scene with a calm body of water reflecting the golden light of the sun. The sun is positioned on the right side of the frame, low on the horizon. The sky transitions from a pale blue at the top to a warm orange near the horizon. The water is dark blue-grey, with a bright, shimmering reflection of the sun on the right side. In the distance, there are low, dark silhouettes of hills or mountains. The overall mood is peaceful and contemplative.

EQUITY

Estoppel & Waiver

EQUITY ESTOPPEL AND WAIVER

Newlon v. Teck American Inc., 2014 MTWCC 12

(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court 1/6/15

- **Summary:** In 1996, Petitioner settled numerous workers' compensation claims against his previous employer with the understanding that he would retain lifetime medical benefits for his left-knee and back conditions. Petitioner did not obtain any treatment for his knee from 2000 until 2007. When Petitioner resumed treatment, Respondent paid until 2011, when it asserted a defense under § 39-71-704(1)(d), MCA, alleging that it was relieved of further liability because Petitioner had not used his medical benefits for more than 60 consecutive months. Petitioner contends that his medical benefits for his knee condition remain open from a claim which predated the addition of the 60-month limitation to the statute, or alternatively, that Respondent is equitably estopped from asserting the 60-month rule in this case. Respondent argues that Petitioner's current knee problems are due to his current employment, or alternatively, that Petitioner's claim is barred by a statute of repose, a statute of limitations, estoppel, or laches.
- **Held:** Petitioner's claim is properly considered under the 1991 WCA, which contains a 60-month provision. However, Respondent is equitably estopped from asserting a defense under § 39-71-704(1)(d), MCA. Respondent has not proven that Petitioner's current knee condition is due to a superseding intervening cause. Respondent has not proven that Petitioner's claim is barred by a statute of repose, statute of limitations, estoppel, or laches. Petitioner is entitled to his costs.

JURISDICTION

The background of the slide is a photograph of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the frame, partially obscured by a thin layer of clouds. Its light creates a shimmering reflection on the water's surface. The sky transitions from a pale yellow near the horizon to a soft, hazy blue at the top. In the distance, dark silhouettes of land or islands are visible against the horizon line. The overall mood is serene and contemplative.

JURISDICTION

McCoy v. Travelers Casualty & Surety Company, 2014 MTWCC 3 (Order Granting Respondent's Motion for Summary Judgment)

- **Summary:** Respondent moved for summary judgment in this matter, arguing that jurisdiction lies in North Dakota since Petitioner was injured while working there. Petitioner objected and contends that this Court has jurisdiction over her claim under § 39-71-402(1), MCA.
- **Held:** Petitioner was not employed in Montana at the time of her industrial injury and therefore this Court does not have jurisdiction over her claim under § 39-71-402(1), MCA. Respondent's motion for summary judgment is therefore granted.

JURISDICTION

Montana Code Annotated § 39-71-402

Extraterritorial applicability and reciprocity of coverage -- agreements with other states -- rulemaking. (1) (a) In the absence of an agreement under subsection (2), if a worker employed in this state who is subject to the provisions of this chapter temporarily leaves this state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

(b) Except as provided in subsection (1)(c) and in the absence of an agreement under subsection (2), if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:

- (i) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are temporarily engaged in work in the state of Montana; and
- (ii) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily engaged in work in the other state.

(c) Unless specifically addressed in an agreement as provided in subsection (2)(d), employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.

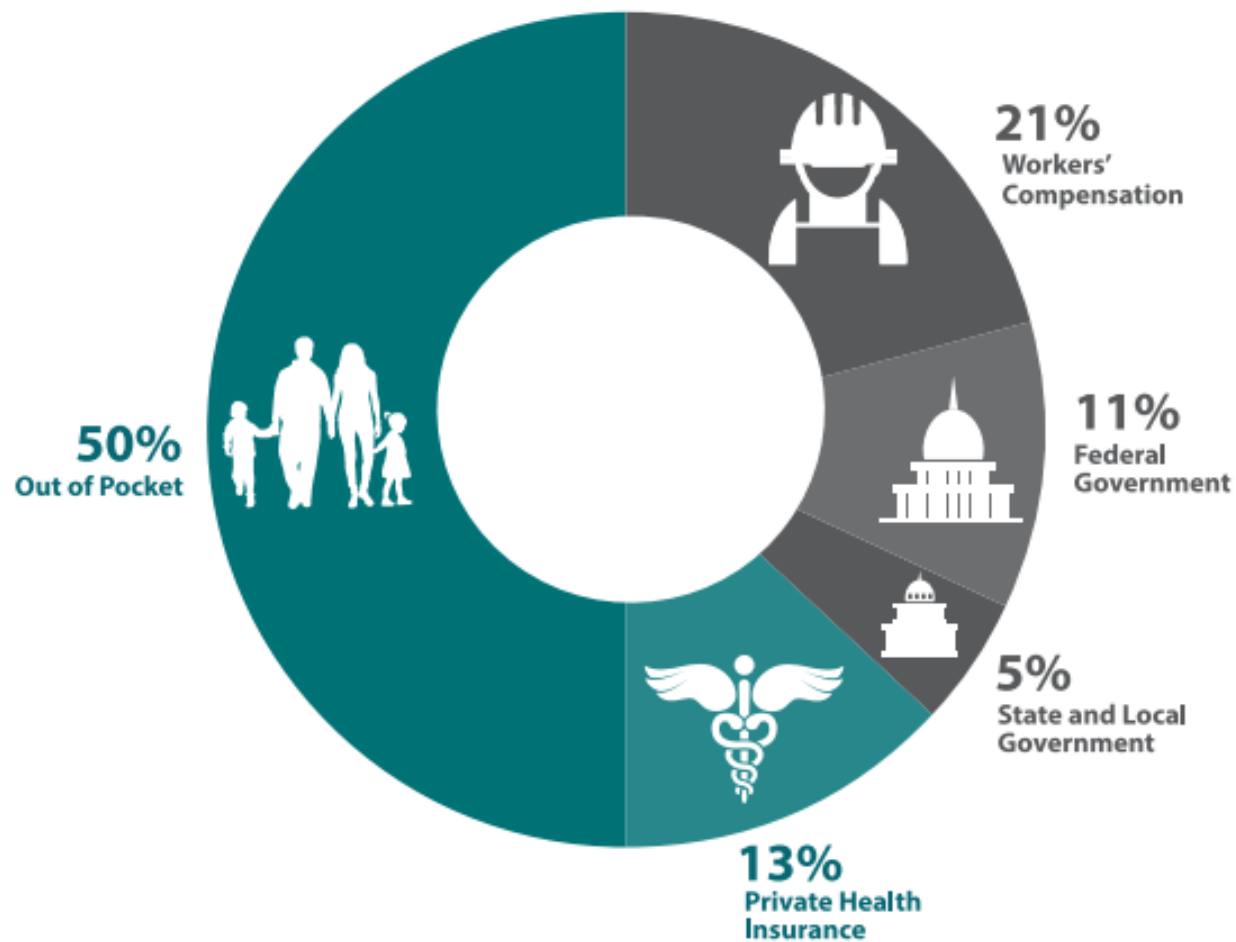
PROCEDURE

McCoy v. Travelers Casualty & Surety Company and Department of Labor and Industry, 2014 MTWCC 3A

(Order Granting Intervenor's Motion for Leave to Intervene, Motion To Intervene, and Intervenor's Motion to Amend, and Order Amending Summary Judgment Order Nunc Pro Tunc and Denying Intervenor's Motion for Reconsideration)

- **Summary:** After the Court issued an order granting summary judgment in this matter, Intervenor moved for leave to file a motion to intervene, and further moved to intervene, to amend the Court's decision, or alternatively for reconsideration. Intervenor asked the Court to remove certain language which discussed extraterritorial agreements which Intervenor argued was problematic to other matters, but did not affect the outcome of the summary judgment in this matter. Petitioner had no objection to Intervenor's motions. Respondent took no position, but reserved its right to object if the Court determined that the changes sought by Intervenor altered the Court's ultimate ruling.
- **Held:** Intervenor's motions for leave to file a motion to intervene, to intervene, and to amend are granted. Since the motion to amend is granted, Intervenor's motion for reconsideration is moot. The Court orders the language Intervenor cited to be removed and replaced with new language nunc pro tunc

Who bears the cost of worker injuries?¹⁴



JURISDICTION/STANDING

Moreau v. Transportation Ins. Co., 2014 MTWCC 9 (Order on Standing and Jurisdiction)

- **Summary:** Petitioner accepted Respondent's settlement offer, which included an agreement that Respondent would reimburse providers for certain medical expenses relating to the claimant's occupational disease. The Libby Medical Plan subsequently refused to accept Respondent's offer to reimburse it for medical bills it paid for the claimant's care. Petitioner argues that Respondent should not be allowed to retain those funds but rather should be required either to pay the funds to Petitioner or to a charity of Petitioner's choice. Upon order of the Court, the parties briefed issues of standing and jurisdiction which have arisen in this matter.
- **Held:** This Court lacks the jurisdiction to hear Petitioner's case under § 39-71-2905, MCA, since no benefits remain in dispute. Petitioner lacks standing to bring this litigation since she has no personal stake in the outcome of the case.

LAST INJURIOUS EXPOSURE


A scenic photograph of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky is a gradient of warm colors, from pale yellow near the horizon to a soft, hazy blue at the top. The water is calm, with gentle ripples. In the distance, there are low, dark silhouettes of land or islands. The overall mood is peaceful and serene.

LAST INJURIOUS EXPOSURE/PENALTIES

Baeth v. Liberty NW Ins. Corp., 2014 MTWCC 10

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner alleges that her work at a plywood plant in Libby from 1989 to March 1994 caused her asbestos-related lung disease. The plant was owned and operated initially by Champion International Co., then was taken over by Stimson Lumber Company in November 1993. Respondent denies that Petitioner suffers from an OD and claims that her respiratory problems are instead related either to COPD or emphysema caused by a long history of smoking. It also argues that even if Petitioner has asbestos-related disease, her non-employment exposure was greater than her exposure during her employment, and that she is judicially estopped from claiming an OD. Petitioner alleges she is entitled to attorney fees and a penalty.
- **Held:** Petitioner's two treating physicians both opined that she has asbestos related disease and that her employment at the plywood plant substantially contributed to it. Petitioner's work for Stimson was of the type and kind that could have caused her asbestos-related disease, and although she had worked relatively briefly for Stimson as compared to Champion, applying the "potentially causal" standard set forth in *In re Claim of Mitchell*, Petitioner was last injuriously exposed to the hazard of the disease while working for Stimson. Petitioner is not judicially estopped from claiming an OD. As Respondent did not act unreasonably in denying Petitioner's claim, Petitioner is not entitled to attorney fees or a penalty.

A rectangular piece of white paper is torn from a larger sheet of brown cardboard. The cardboard is visible around the edges of the white paper, with some of the top and bottom layers folded over the white surface. The text "Work Injury Claim" is printed in a black, serif font on the white paper.

Work Injury Claim

LAST INJURIOUS EXPOSURE/STATUTES OF LIMITATION

Monroe v. MACo Workers Comp Trust, 2014 MTWCC 7

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner alleges her late husband, a W.R. Grace & Co. employee for over twenty years, was exposed to asbestos while later working with the Lincoln County Road Department in the Libby area for over ten years. Petitioner's husband was diagnosed with asbestos-related lung disease in 2001 and died in 2010. The decedent's claim for compensation with W.R. Grace was settled on a disputed liability basis. Petitioner alleges Lincoln County is liable for her husband's death under the last injurious exposure rule. Respondent denies liability on the grounds that Petitioner's claim is untimely pursuant to § 39-71-601, MCA, and that Petitioner's husband developed asbestos-related disease as a result of his work with W.R. Grace and not Lincoln County.
- **Held:** Respondent is liable for Petitioner's claim under the "potentially causal" standard enunciated in *In re Claim of Mitchell*. Because no one at the Lincoln County Road Department had filed for asbestos-related disease at the time Petitioner submitted her claim, the Court concluded that Petitioner neither knew nor should have known that her husband's work for the county was directly related to his asbestos-related disease until informed by her attorney. Petitioner's claim is not time-barred, and she is entitled to widow's benefits and burial expenses. Petitioner is not entitled to PPD benefits based on a 100% impairment.

PENALTIES



PENALTIES

Koch v. Employers Insurance Group, 2014 MTWCC 14

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** After this Court held that Petitioner's claim was compensable and ordered Respondent to pay medical benefits for reasonable primary medical treatment as prescribed by her treating physician, Petitioner's treating physician ordered a new MRI and began diagnostic epidural injections in an attempt to locate the source of Petitioner's ongoing symptoms. After paying for the MRI and the first injection, Respondent denied further liability and ceased paying for Petitioner's prescription medications, arguing that Petitioner could not prove a causal connection between the new MRI findings and her industrial injury. Petitioner contends that she is entitled to ongoing medical benefits and coverage of her prescription medications. She further contends that Respondent has unreasonably denied her benefits and that she is entitled to her attorney fees and a penalty.
- **Held:** Petitioner is entitled to the medical treatment prescribed by her treating physician, and is further entitled to coverage for the medications he prescribes for treatment of her injuries related to her industrial injury claim. Respondent unreasonably terminated Petitioner's benefits when it ceased authorizing her treating physician's recommended diagnostic tests, and when it later refused to pay for Petitioner's prescription medication. Petitioner is therefore entitled to a penalty and her attorney fees.

PENALTIES

Montana Code Annotated

"Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.



PROCEDURE

A serene sunset scene over a calm body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a shimmering golden reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange near the horizon. In the distance, dark silhouettes of land or islands are visible against the horizon line. The word "PROCEDURE" is centered in the upper half of the image in a bold, dark blue, serif font.

PROCEDURE/MOTIONS FOR RECONSIDERATION

Peters v. American Zurich Ins. Company, 2014 MTWCC 4

(Order Denying Petitioner's Motions to Amend and/or Reconsider)

- **Summary:** Petitioner moved for amendment or reconsideration of decisions reached by the Court in two underlying Orders regarding portions of his claims against Respondent. Respondent objected to Petitioner's motions, arguing that the Court correctly resolved the pertinent issues.
- **Held:** Petitioner's motions are denied. In one instance, Petitioner has requested that the Court reach the same result it reached in the underlying decision, and therefore no "reconsideration" is necessary. In the other instance, Petitioner addresses only one of the two reasons as to why the Court reached its decision and fails to support his argument with any citation to case law or statute.



PROCEDURE/MOTIONS FOR RECONSIDERATION

Peters v. American Zurich Ins. Company, 2014 MTWCC 4

“Exhibit one to the Affidavit, states the name of Phillip Peters, shows the amount of \$2,000.05, states ‘Roscoe Steel Department #1’ and notes ‘Current quarter number one.’ The document notes ‘Run date 1/11/99’ **and a ‘w/e date 1/13/99,’** with a handwritten notation, ‘Bonus’ and the date (partially obscured by a punch hole) **‘1/13/99’.**” [sic]

STATUTE OF LIMITATIONS

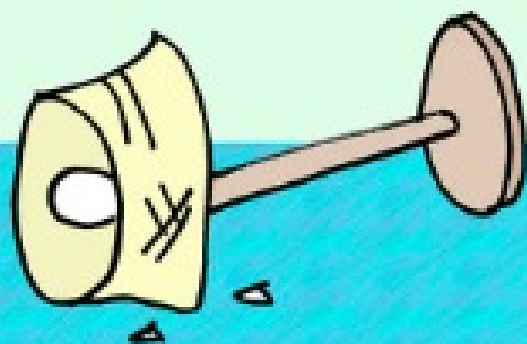
A background image of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky is a gradient of warm colors, from pale yellow near the horizon to a soft, hazy blue at the top. The water is calm, with gentle ripples. In the distance, there are low, dark silhouettes of land or islands. The overall mood is serene and contemplative.

STATUTES OF LIMITATION

Peterson v. Liberty NW Ins. Corp., 2013 MTWCC 26 (Findings of Fact, Conclusions of Law and Judgment)

- **Summary:** Petitioner alleges he suffers from asbestos-related disease as a result of his 26-year history working at the Libby lumber mill. Respondent counters that Petitioner filed his claim long after the statute of limitations had run pursuant to § 39-72-403, MCA, and therefore, Petitioner's claim is time-barred.
- **Held:** Given Petitioner's knowledge of asbestos contamination at the Libby mill and the number of occupational disease claims filed over the years by employees at the mill alleging asbestos-related disease due to their employment, Petitioner knew or should have known that his occupation contributed to his asbestos-related disease for years prior to filing a claim for benefits. Petitioner's claim for occupational disease benefits is time-barred under the statute of limitations, § 39-72-403, MCA.

I WONDER WHAT THE
STATUTE OF LIMITATIONS IS
ON SOMETHING LIKE THIS?



Ba'00

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STATUTES OF LIMITATION

Dvorak v. Montana State Fund, 2014 MTWCC 11

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** In 2006, Petitioner sought medical treatment for neck and shoulder pain which she attributed to her job duties. Her symptoms were managed with the use of a prescription pain reliever until they worsened in late 2010. In 2011, her treating physician referred her to a specialist and she subsequently filed an occupational disease claim. Respondent contends that the claim was untimely filed under § 39-71-601(3), MCA, and that Petitioner should have known in 2006 that she suffered from an occupational disease. Petitioner contends that she did not know she had an occupational disease until her treating physician told her.
- **Held:** The facts of this case indicate that neither Petitioner nor her treating physician gave any consideration to her symptoms beyond refilling her prescription for several years after she first complained of these symptoms. The Court concluded that she knew or should have known that she suffered from an occupational disease on the day that her treating physician first took her off work and referred her to a specialist for further evaluation.

SUMMARY JUDGMENT

A scenic background image of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange and yellow near the horizon. In the distance, there are silhouettes of landmasses or islands. The overall mood is peaceful and serene.

SUMMARY JUDGMENT/STATUTES OF LIMITATIONS/ BENEFITS

Nelson v. Montana Schools Group Insurance Authority, 2014 MTWCC 1 (Order Granting in Part & Denying in Part Respondent's Motion for Summary Judgment)

- **Summary:** Respondent moves for summary judgment on two issues: (1) With respect to Respondent's denial of medical bills and travel expenses associated with treatment Petitioner received in 2011, Respondent contends that Petitioner failed to timely file her petition pursuant to § 39-71-2905, MCA. (2) With respect to Petitioner's claim for TPD benefits, Respondent contends that Petitioner is not entitled to these benefits because she has not suffered a wage loss.
- **Held:** With respect to Respondent's denial of medical bills and travel expenses associated with the treatment Petitioner received in 2011, Respondent's motion is denied. The statute of limitations for Petitioner's claim commenced when Respondent denied her claim for benefits and Petitioner filed her petition within two years of Respondent's denial in accordance with § 39-71-2905, MCA. With respect to Petitioner's claim for TPD benefits, Respondent's motion is granted. Petitioner has not suffered a wage loss as a result of her injury and is therefore not entitled to TPD benefits pursuant to § 39-71-712, MCA.

WORK INJURY CLAIM



DENIED

UNINSURED EMPLOYERS FUND



UNINSURED EMPLOYERS FUND

Jensen v. Uninsured Employers' Fund and Montan State Fund, 2014 MTWCC 5

(Order on Cross-Motions for Summary Judgment)

- **Summary:** The parties agreed to submit this matter to the Court upon agreed facts and briefs, and the Court treated the parties' submissions as cross-motions for summary judgment pursuant to ARM 24.5.329. Petitioner made a claim for benefits for injuries sustained in a fall from a roof while a resident of the Butte Prerelease Center under contract with the Montana Department of Corrections. The partnership that hired Petitioner to replace the roof on a rental house was uninsured, as was the owner of the house. The Uninsured Employers' Fund maintained that Petitioner was an employee of the partnership which was in turn a subcontractor of either the owner of the house or the Butte Prerelease Center under § 39-71-405, MCA.
- **Held:** Petitioner was at most only a casual employee of the owner of the house where Petitioner was injured. Although the Butte Prerelease Center was required to assist its residents in attaining employment, there was no contractual relationship between the Butte Prerelease Center and the partnership that employed Petitioner. Since there was no statutory employer pursuant to § 39-71-405, MCA, the Uninsured Employers' Fund is liable for Petitioner's workers' compensation benefits, with a right to indemnification from the partners of the partnership who hired and employed Petitioner.

UNINSURED EMPLOYERS FUND

Montana Code Annotated 39-71-116

- (6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.



Montana Supreme Court Decisions



Goble and Gerber v. Montana State Fund

2014 MT 99

- **Summary:** Goble and Gerber were both injured in the course and scope of their employment, but were thereafter sentenced to periods of incarceration in excess of 30 days. Montana State Fund was the insurer on both claims. After accepting the claims and paying certain benefits, MSF advised Goble and Gerber that they were eligible for PPD benefits under § 39-71-703, MCA, but once incarcerated, were no longer eligible for those benefits during the period of their incarceration pursuant to § 39-71-744, MCA. (Prior to Gerber's incarceration, MSF offered to pay him his undisputed impairment award in a lump sum as permitted under the 2007 version of -703, which he declined.) Goble and Gerber argued they were "immune from the ineligibility language of -744 because their eligibility to receive -703 benefits was determined prior to their incarceration." They also challenged the constitutionality of the statutes as they on equal protection and substantive due process grounds.
- **Held:** The WCC's order denying Goble and Gerber -703 that accrued during the period of their incarceration is affirmed. The clear language of -744 precludes an injured worker from receiving PPD benefits during his incarceration, provided the incarceration exceeds 30 days, regardless of whether the right to those benefits vested prior to or during the incarceration. A worker who has become incarcerated has removed himself from the job force as a result of committing a crime. Goble's and Gerber's interpretation of the statute would defeat the public policies of the Act to "provide wage-loss benefits which bear a reasonable relationship to actual lost wages," and to "return a worker to work as soon as possible after the worker has suffered a work-related injury or disease."

Nor do the provisions -703 and -744 violate Goble's or Gerber's constitutional rights to equal protection or substantive due process. Contrary to the WCC's holding, the statutes create two classes of similarly situation individuals. However, the ineligibility provision of -744 rationally advances the legitimate governmental interests of the Act, and does not violate an incarcerated individual's right to equal protections.

Malcomson v. Liberty Northwest

2014 MT 242

- **Summary:** Tina Malcomson filed a workers' compensation claim in December 2007, after she was injured in her employment as a manager of Freemo's Pizza in Missoula, Montana. Liberty Northwest was the insurer for the claim. After Malcomson withdrew her consent to allow Liberty and its agents to have ex-parte communications with her medical providers, Liberty terminated her benefits, claiming that Malcomson's withdrawal of consent violated §§ 39-71-604 and 50-16-527, MCA (2007). Malcomson sued to have her benefits reinstated, asserting these statutes are unconstitutional. The WCC held that § 39-71-604, MCA, as applied to the facts of the case, violated Malcomson's constitutional right of privacy. The WCC also directed Liberty to reinstate benefits and held it could not have ex-parte communications with Malcomson's medical team without her knowledge and opportunity to participate. Liberty appealed.
- **Held:** The WCC's order is affirmed. The WCC properly applied a "strict scrutiny" analysis in its constitutional review of § 39-71-604(3) and, contrary to Liberty's position, the statute indeed implicates the right of privacy guaranteed by Article II, Section 10 of the Montana Constitution. While an insurer is entitled to access a claimant's medical information relevant to the claim, the ex-parte communication provision of the statute is not justified by a compelling state interest and is not narrowly tailored to effectuate the public policies of the Workers' Compensation Act. To the contrary, the ex-parte provision clearly violates a claimant's fundamental right of privacy in her medical records, and is therefore unconstitutional on both an applied and facial basis.

Moreau v. Transportation Insurance Co.

2015 MT 5

- **Summary:** The WCC held that Moreau did not have standing to claim medical benefits on behalf of her husband's estate.
- **Held:** Reversed and remanded. The plain language of § 39-71-2905, MCA, entitled Moreau, as personal representative of the Estate, to bring the matter before the Workers' Compensation Court for a decision.

STATUS AND DISPOSITION OF JUDGE SHEA'S CASES APPEALED TO THE MONTANA SUPREME COURT



Affirmed	38
Affirmed in Part – Reversed in Part	1
Reversed	6
Dismissed	35
Judgment Vacated by Stipulation of Parties	1
Pending	1

The Sun Rises on Sandler

Appointed August 20, 2014



...ing on the site. ... remove the site or structures and the ... CONTRACTOR or in ... materials including sand, gravel, stone long- ... e specifically agreed under thi- ... ight to claim over the ... cording to th-

Work Injury Claim Form

...iving as many details as possible. Failure to do so may result in t

his accurately, 0

Personal Information	
Name	Other
State:	ZIP Code:
Home Telephone	

A pair of glasses with a silver frame and a silver pen with a black grip are resting on a 'Work Injury Claim Form'. The form is white with black text and lines. The title 'Work Injury Claim Form' is prominently displayed in the center. Above the title, there is a paragraph of text that is partially obscured. Below the title, there is a line of text that reads '...iving as many details as possible. Failure to do so may result in t'. Below this, there is a section titled 'Personal Information' which contains a table with four rows and two columns. The first row has 'Name' and 'Other'. The second row has 'State:' and 'ZIP Code:'. The third row has 'Home Telephone' and an empty space. The glasses are positioned on the left side of the form, and the pen is positioned on the right side.

BURDEN OF PROOF

A scenic photograph of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange near the horizon. In the distance, silhouettes of landmasses or islands are visible against the horizon line. The overall mood is serene and contemplative.

BURDEN OF PROOF

Haines v. Montana University System Self-Funded Workers' Compensation Program, 2015 MTWCC 9

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner was injured in an industrial accident in which he was exposed to chlorine gas while mixing swimming pool chemicals. He later developed peripheral neuropathy in his legs, which he attributes to either the industrial accident or as an occupational disease from exposure to various pool maintenance chemicals over the course of his employment. Respondent accepted liability for ocular chemosis and other acute injuries in the immediate aftermath of the industrial accident, but denied further liability for Petitioner's peripheral neuropathy, contending that it was not caused either by the industrial accident or his ongoing chemical exposures.
- **Held:** Petitioner has not proven that his exposure to chemicals caused his peripheral neuropathy. The weight of the medical evidence indicates that neither chlorine gas nor calcium hypochlorite caused his peripheral neuropathy. Although Petitioner alternately contended that he suffered an occupational disease from exposure to a variety of chemicals in the course and scope of employment, the only physician who testified that these chemicals caused his peripheral neuropathy did not have sufficient foundation to offer such an opinion.



Search ID: aban1215

**"It's just a paper cut but you can't claim
it is work related. You told me you work
in a paperless office."**

BURDEN OF PROOF/DISABILITY

Kellegher v. MACo Workers' Comp. Trust, 2015 MTWCC 16

(Findings of Fact, Conclusions of Law and Judgment)

- **Summary:** Petitioner suffered several injuries from a work-related accident. He contends that the resultant conditions, particularly vertigo, frequent headaches, and left knee problems, have left him permanently totally disabled. Respondent disagrees, arguing that one member of an IME panel approved job analyses and therefore Petitioner does not meet the statutory requirements for PTD.
- **Held:** The evidence demonstrates that Petitioner has no reasonable prospect of physically performing regular employment as a result of the work-related injuries he sustained and he is therefore permanently totally disabled.

BURDEN OF PROOF/MAJOR CONTRIBUTING CAUSE

Kramlich v. The Montana Municipal Interlocal Authority, 2014 MTWCC 21

(Findings of Fact, Conclusions of Law, and Judgment)

- **Summary:** Petitioner contends that he suffers from an occupational disease caused by exposure to dust, exhaust, and other inhalants in the course and scope of his employment performing street worker duties for the City of Lewistown, and that Respondent unreasonably denied his claim. Respondent contends it reasonably denied the claim because Petitioner's employment was not the major contributing cause of his medical conditions.
- **Held:** Petitioner has not met his burden of proving that his employment was the major contributing cause of his alleged occupational diseases. Petitioner's treating physicians and the IME physician appear to agree that Petitioner's sleep apnea was the major contributing cause of his congestive heart failure and sequelae. The IME physician testified that Petitioner's sleep apnea was not work-related. Petitioner has not offered any medical evidence to the contrary. Respondent is therefore not liable for his claim.

COURSE & SCOPE



COURSE AND SCOPE/WAGES

Olson v. Montana State Fund, 2015 MTWCC 2 (Decision on Stipulated Record)

- **Summary:** Petitioner suffered injuries in a car accident which occurred while he was traveling to his jobsite in a co-worker's personal vehicle prior to the start of his shift. Petitioner argues that he was in the course and scope of his employment because the payment he received as "subsistence 'in lieu of any travel allowance per day worked'" is reimbursement for travel within the meaning of § 39-71-407(4)(a)(i), MCA, and therefore, this case falls under an exception to the going and coming rule. Petitioner also argues that the payment he received was not designated as an "incentive to work at a particular jobsite" within the meaning of § 39-71-407(4)(b), MCA.
- **Held:** Petitioner was in the course and scope of his employment at the time of the accident. The Montana Supreme Court has held that a payment designated in a union contract as "subsistence per day worked in lieu of any travel time or travel allowance" is travel pay. Thus, an employee who receives such pay is within the course and scope of his employment while traveling to work. This case does not fall under § 39-71-407(4)(b), MCA, because the collective bargaining agreement did not "designate" Petitioner's payment as an "incentive to work at a particular jobsite."

DISCOVERY



DISCOVERY/SANCTIONS

Atchley v. Louisiana Pacific Corp., 2015 MTWCC 3

(Order Granting in part and Denying in part Respondent's Motion for Sanctions, Motion to Limit and Motion to Strike Regarding "11 Mile Radius" Exhibit)

- **Summary:** Respondent moves for sanctions and to limit testimony and the use of an exhibit that was not disclosed until months after the Court granted Respondent's motion to compel discovery of all evidence supporting Petitioner's allegations. Petitioner responds that Respondent cannot prove prejudice by the late disclosure of the exhibit and that the motion is moot as Petitioner does not intend to offer the document into evidence.
- **Held:** Respondent was put on notice after this Court granted its motion to compel that timber harvested in the so-called "11-mile radius" zone was a potential source of the alleged asbestos contamination at its mill and therefore, any prejudice caused by the late disclosure of the "11-mile radius" exhibit was not as great as Respondent alleges. Nevertheless, sanctions are warranted for Petitioner's failure to timely produce the disputed document. The Court will grant a motion to extend the deadlines in the scheduling order to provide Respondent time to "analyze and investigate" the disputed exhibit, which may include reopening the deposition of Petitioner's expert; to supplement its exhibit list; and to file other pretrial motions it feels are needed because of the late disclosure of the disputed exhibit. If the deposition is reopened, Petitioner shall bear all expenses of the deposition, including any reasonable costs incurred by Respondent. Should Respondent file any motions or reopen the deposition, this Court will vacate the current trial setting. The postponement of trial and the increased costs to Petitioner will serve as the appropriate sanctions for failing to timely produce the disputed document.

INTERVENTION

A serene sunset scene over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a shimmering golden reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange near the horizon. In the distance, dark silhouettes of land or islands are visible against the horizon line. The word "INTERVENTION" is superimposed in the center of the image in a bold, dark blue, serif typeface.

INTERVENTION

Moreau, Individually and as PR of the Estate of Edwin Moreau v. Transportation Insurance Co., 2015 MTWCC 17

(Order Denying Motion to be Joined or Intervene)

- **Summary:** The decedent's employer moved to be joined under M.R.Civ.P. 19 and 20, or to intervene under M.R.Civ.P. 24, arguing that it had an interest in the litigation because it already paid the decedent's medical bills via an entity it had funded and because it has agreed to indemnify Respondent/Insurer for any occupational disease benefits Respondent/Insurer pays. It argues it would be forced to pay the decedent's medical benefits twice if Petitioner prevails. Petitioner argues that the employer cannot be liable for occupational disease benefits and that this Court has no jurisdiction to resolve a contract dispute between the employer and Respondent/Insurer if a dispute arises over the indemnity agreement.
- **Held:** The employer's motion to be joined or to intervene is denied. Respondent/Insurer is the only entity that can be liable for occupational disease benefits. While the decedent's medical bills were paid by an entity that the employer funded and while the employer has agreed to indemnify Respondent/Insurer, neither the amounts the employer paid to fund the entity, the payments the entity made, nor the amounts that the employer might be required to pay under its indemnity agreement are "medical benefits" under § 39-71-704, MCA. The employer's interests are secondary and arise from a separate agreement with the Respondent/Insurer, which is outside of this Court's jurisdiction. The employer's interests are aligned with Respondent/Insurer's, which has and continues to vigorously defend this case.

JURISDICTION



JURISDICTION

Wommack v. National Farmers Union Property & Causalty, Co., et al.,
2014 MTWCC 22

(Order Dismissing Petition)

- **Summary:** During oral argument on pending motions it was revealed that Petitioner had recently undergone an occupational disease evaluation in August 2014, pursuant to § 39-72-602(2), MCA (1995-2003). Since Petitioner had filed the Petition for Trial before the OD evaluation, the Court required the parties to brief the issue of subject matter jurisdiction. While Petitioner maintains that an OD panel evaluation is not a prerequisite to filing a petition before this Court, all Respondents agree that sufficient doubt exists as to this Court's continued subject matter jurisdiction of the pending Petition for Trial so as to warrant dismissal without prejudice in order to remove any cloud over this Court's authority to proceed to hearing.
- **Held:** This Court did not have jurisdiction when this case was filed, as § 39-72-602, MCA (1997), contains "mandatory language" that "an OD evaluation must occur before a dispute can be presented to and resolved by the WCC." The post-petition OD evaluation at least places a cloud of uncertainty over this Court's continued subject matter jurisdiction. As this Court has done in similar circumstances since 2005, this case is dismissed without prejudice.

JURISDICTION

Larson v. Montana State Fund, 2015 MTWCC 1

(Order Denying Petitioner's Motion to Dismiss Without Prejudice or Alternatively to Vacate and Place Case in Administrative Closure)

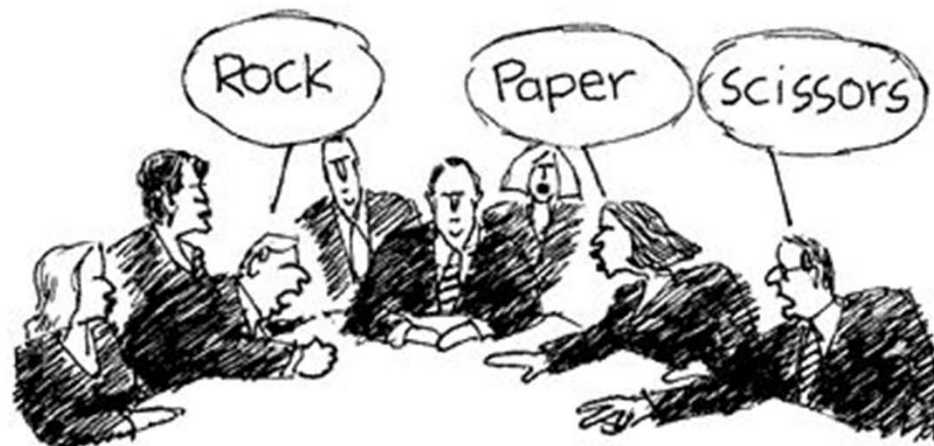
- **Summary:** Petitioner moves to dismiss this case without prejudice. He claims that while he currently suffers from an occupational disease, he is not seeking any benefits and argues that this Court does not have subject matter jurisdiction over initial compensability disputes in occupational disease claims. If this Court has jurisdiction, Petitioner alternatively asks that this case be placed in “administrative closure” until such time as he seeks occupational disease benefits. Respondent opposes Petitioner's motion.
- **Held:** Petitioner's motion is denied. Under the plain language of § 39-71-2905(1), MCA (2007), this Court has subject matter jurisdiction regarding disputes over the initial compensability of an occupational disease claim under the grant of “exclusive jurisdiction” to decide disputes under the Workers' Compensation Act and because such disputes concern benefits. This Court does not have the authority to place a case in abeyance indefinitely over an objection.

JURISDICTION/BENEFITS

New Hampshire Ins. Co. v. Matejovsky, 2015 MTWCC 15

(Order Affirming Interim Benefits Under § 39-71-610, MCA)

- **Summary:** Petitioner appealed from a Department order granting interim benefits to Respondent under § 39-71-610, MCA, arguing that that the Department did not have jurisdiction to award interim benefits and that Respondent had neither demonstrated financial hardship nor presented a prima facie case which are required for her to be entitled to such benefits.
- **Held:** The Department had jurisdiction to order interim benefits, and Respondent has met the four factors this Court considers in determining whether a claimant is entitled to interim benefits under § 39-71-610, MCA. Therefore, the Department's order granting interim benefits is affirmed.



© 2011

Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.

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JURISDICTION/MEDIATION/UNINSURED EMPLOYERS FUND

Car Werks, LLC v. Uninsured Employers' Fund, et al, 2015 MTWCC 13 (Order Denying Third Party Respondent's Motion for Summary Judgment)

- **Summary:** Third Party Respondent moves for summary judgment on the grounds that this Court lacks jurisdiction, contending that Petitioner is only contesting the mediator's "decision" and that this Court cannot reverse a mediator's "decision," which is nonbinding. Third Party Respondent also argues this Court lacks jurisdiction because the specific issue mediated in this case was Respondent/Third Party Petitioner's acceptance of liability for Petitioner's claim and not the issue in this case, which is medical causation.
- **Held:** This Court has jurisdiction. Petitioner's initial pleading makes it clear that it is contesting the UEF's acceptance of liability of Third Party Respondent's claim and not just the mediator's "decision." The evidence also shows that Petitioner mediated the dispute over the UEF's acceptance of liability which includes the issue of medical causation. Petitioner has followed the procedure set forth in § 39-71-520, MCA, to contest the UEF's determination to accept liability and pay benefits.

MEDIATION



MEDIATION/JURISDICTION

Young v. New Hampshire Ins. Co., 2015 MTWCC 14

(Order Dismissing for Lack of Subject Matter Jurisdiction)

- **Summary:** Respondent contended in its Response to Petition for Hearing that the parties had not completed the mandatory mediation process when Petitioner filed his Petition for Hearing (Injury). Petitioner concedes that the parties had not completed the mediation process when he filed his Petition for Hearing (Injury). However, relying on maxims of jurisprudence, such as “The law neither does nor requires idle acts,” Petitioner argues that this Court has jurisdiction because the parties were entrenched in their positions and that the mediation process was therefore “a complete waste of time.”
- **Held:** This Court does not have subject matter jurisdiction and therefore this case is dismissed without prejudice. In 2004, the Montana Supreme Court held, “the Workers’ Compensation Court does not have jurisdiction during the pendency of a statutorily-mandated mediation, given that a claimant may only petition the Workers’ Compensation Court ‘after satisfying dispute resolution requirements otherwise provided’ in the Workers’ Compensation Act—such as mandatory mediation.” Thus, in 2005, this Court warned, “[I]n the future, all petitions which are filed before completion of mandatory mediation will be dismissed.” This case is no exception.

Mediation...



PROCEDURE



PROCEDURE

Brown v. Morin, et al, 2015 MTWCC 10

(Order Denying Respondent's Motion for Contempt)

- **Summary:** Respondent moved to hold Petitioner and his attorney in contempt and sought sanctions, including dismissal of this case, on the grounds that Petitioner did not produce documents at his deposition pursuant to a subpoena duces tecum.
- **Held:** Petitioner had no obligation to produce the documents at his deposition because he was not properly served with the subpoena duces tecum under M.R.Civ.P. 45.

PROCEDURE/STATUTES OF LIMITATION

Spencer v. Montana Schools Group Ins. Authority, 2015 MTWCC 11 (Order Granting Respondent's Motion to Amend Response to Petition)

- **Summary:** Respondent moved to amend its response to the Petition for Hearing to raise a statute of limitations defense under § 39-71-2905(2), MCA, which states, “A petition for a hearing before the workers’ compensation judge must be filed within 2 years after benefits are denied.” Petitioner argues that Respondent should not be allowed to amend on the grounds that Respondent’s motion is untimely and that it would be unduly prejudicial to allow Respondent to raise another statute of limitations defense because he has spent “thousands” of dollars in expert witness fees.
- **Held:** Respondent’s motion to amend is granted. This Court follows M.R.Civ.P. 15(a), which provides that leave to amend a pleading is to be freely given when justice so requires. Respondent’s motion to amend was timely under the Scheduling Order. Since cases in this Court are heard on an expedited basis when compared to civil actions in Montana’s district courts, amendments to pleadings will often occur shortly before trial. After considering the Petitioner’s objections, the amendment is not unduly prejudicial because Petitioner was aware of the statute of limitations defense under § 39-71-2905(2), MCA, and was on notice that there was another statute of limitations defense affirmatively pled in the response to the petition. Nevertheless, he proceeded forward with his case.

STATUTE OF LIMITATIONS

A scenic background image of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange and yellow near the horizon. In the distance, there are silhouettes of landmasses or islands. The overall mood is peaceful and serene.

STATUTES OF LIMITATION

Spencer v. Montana Schools Group Ins. Authority, 2015 MTWCC 12 (Order Granting Respondent's Motion for Summary Judgment)

- **Summary:** Respondent moves for summary judgment on the grounds that Petitioner did not timely file his claim under § 39-71-601(3), MCA, and that he did not timely petition this Court for trial under § 39-71-2905(2), MCA.
- **Held:** Petitioner did not file his Petition for Hearing within two years of Respondent's denial of liability of his occupational disease claim, even taking into account the time the statute of limitations was tolled while his claim was in the mandatory mediation process. Thus, his case is time-barred under § 39-71-2905(2), MCA.



STATUTES OF LIMITATIONS/INDEPENDENT CONTRACTORS

Emanuel v. Montana State Fund, 2015 MTWCC 6 (Order Denying Respondent's Motion to Dismiss)

- **Summary:** Respondent moves to dismiss the Petition on the grounds that this matter is time-barred under § 39-71-520(1), MCA, which provides that “[a] dispute concerning uninsured employers’ fund benefits must be appealed to mediation within 90 days from the date of the determination.” Petitioner opposes Respondent’s motion, arguing that § 39-71-520, MCA, is inapplicable to his case because he is not seeking benefits from the UEF.
- **Held:** Respondent’s motion is denied because Petitioner is not seeking “uninsured employers’ fund benefits.” Rather, Petitioner seeks benefits under § 39-71-405(1), MCA, which provides, in relevant part:

An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker’s Compensation Act.

The time limitation in § 39-71-520(1), MCA, is inapplicable to this case. Moreover, § 39-71-415(1), MCA, specifically provides that disputes over benefits between an insurer and a claimant involving an issue of whether the claimant was an employee or an independent contractor are governed by § 39-71-2905, MCA, which contains a two-year statute of limitation. Petitioner brought this case well within two years of the date of Respondent’s denial of liability. Therefore, this Court has jurisdiction to decide the merits of Petitioner’s claim.

UNINSURED EMPLOYERS FUND

Emanuel v. Montana State Fund, 2015 MTWCC 8

(Order Dismissing Third Party Respondent Uninsured Employers' Fund)

- **Summary:** The UEF and Petitioner object to State Fund's third party petition. Although State Fund concedes that the UEF will not be liable to any party to this case if Petitioner prevails, State Fund maintains that the UEF is a necessary party under M.R.Civ.P. 19, for this Court to have a "full understanding of the UEF's actions concerning Emanuel's ICEC."
- **Held:** The UEF is dismissed because it does not have any stake in the outcome of this case. If Petitioner prevails on his claim against State Fund, the UEF will not be liable to any party for benefits. Moreover, the UEF does not need to be a party to this case for this Court to have a full understanding of the positions the UEF took in denying liability for Emanuel's claim. If State Fund believes the documents from the UEF are relevant to this case, it can offer them as exhibits, as it has already done. If State Fund believes that the UEF's agents have personal knowledge of facts relevant to this case, it can call them as witnesses.

SUMMARY JUDGMENT

A scenic background image of a sunset over a body of water. The sun is a bright, glowing orb on the right side of the horizon, casting a long, shimmering reflection across the water's surface. The sky transitions from a pale blue at the top to a warm orange and yellow near the horizon. In the distance, there are silhouettes of landmasses or islands. The overall mood is peaceful and serene.

SUMMARY JUDGMENT/BURDEN OF PROOF

Cole v. Montana State Fund, 2015 MTWCC 4

(Order Denying Petitioner's Motion for Summary Judgment)

- **Summary:** Relying upon the opinions of her treating physician and his PA, and her medical records, Petitioner moves for summary judgment on the grounds that she indisputably suffered a compensable shoulder injury when she fell at work on February 19, 2014. Respondent argues that there are issues of material fact as to whether Petitioner either injured her shoulder or aggravated a pre-existing shoulder injury when she fell at work.
- **Held:** There are issues of material fact that preclude summary judgment. While Petitioner's treating physician and his PA have opined that Petitioner tore her rotator cuff when she fell at work, their opinions appear to be based mostly, if not entirely, on what Petitioner told them. Respondent has presented admissible evidence from which it can be reasonably inferred that Petitioner's statements to her treating physician and his PA were not entirely truthful and/or that they did not know all the facts when they gave their opinions. This Court will have to evaluate Petitioner's credibility and her providers' testimony at trial to determine whether she suffered a compensable injury or aggravation.



SUMMARY JUDGMENT/LAST INJURIOUS EXPOSURE

Wommack v. National Farmers Union Property & Casualty Co., et al, 2015 MTWCC 5

(Order Granting Respondent CHS Inc.'s Motion for Summary Judgment)

- **Summary:** Respondent CHS Inc. moves for summary judgment on the grounds that it is not liable for Petitioner's OD under the last injurious exposure rule, as codified in § 39-72-303(1), MCA (1997). Petitioner worked at the Cenex refinery in Laurel when he was exposed to asbestos. After Petitioner left employment with Cenex, Cenex was part of the merger that formed CHS Inc., which is a self-insured employer. CHS Inc. argues that it is not liable because it was never Petitioner's employer's insurer and, therefore, not the insurer at risk when Petitioner was exposed to the hazards of his alleged OD.
- **Held:** Since Petitioner left employment before his employer merged with another company and became CHS Inc., a self-insured employer, he was never injuriously exposed to the hazard of his alleged OD while CHS Inc. was the insurer at risk. In a recent case involving asbestos exposure at the Cenex refinery, the Montana Supreme Court explained, "liability for and administration of [an OD] claim should correspond with the period in which the injurious exposure occurred." There is no genuine issue of material fact as to CHS Inc.'s liability and, therefore, CHS Inc. is entitled to judgment as a matter of law.

SUMMARY JUDGMENT/LAST INJURIOUS EXPOSURE

Wommack v. National Farmers Union Property & Casualty Co., et al, 2015 MTWCC 7

(Order Granting Respondent National Farmers Union Property & Casualty Co.'s Motion for Summary Judgment)

- **Summary:** Respondent National Farmers Union Property & Casualty Co. moves for summary judgment, arguing that it is not liable for Petitioner's OD. *Inter alia*, National Farmers Union Property & Casualty Co. argues that it is not liable under the last injurious exposure rule because Petitioner was exposed to asbestos at work for years after its coverage ended. Petitioner opposes the motion but does not specifically argue that National Farmers Union Property & Casualty Co. is or could be liable. Neither Respondent Nationwide Mutual Fire Ins. Co. nor Respondent Montana State Fund opposes the motion. Respondent Liberty Mutual Fire Ins. Co. opposes the motion to argue that the 1997 WCA is applicable and that it is not liable under the last injurious exposure rule; however, it does not argue that National Farmers Union Property & Casualty Co. is or could be liable.
- **Held:** National Farmers Union Property & Casualty Co. is entitled to summary judgment under the last injurious exposure rule. The undisputed facts show that Petitioner was exposed to asbestos "on a daily basis" for years after National Farmers Union Property & Casualty Co.'s coverage of Petitioner's employer ended, while other insurers were insuring his employer.

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"Sir, was that the spill you wanted us to mop up so no one would slip?"

SUMMARY JUDGMENT/TERMINATION FOR CAUSE

Spencer v. Zurich American Ins. Co., 2014 MTWCC 20

(Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment)

- **Summary:** Petitioner and Respondent moved for summary judgment on stipulated facts on the issue of whether Petitioner became entitled to TTD benefits after his employer terminated him while he was working in a modified position. The employer terminated Petitioner for “performance issues because he was not a ‘fit for culture, property, department.’”
- **Held:** Petitioner is entitled to TTD benefits from the date of his termination to the date of his surgery under § 39-71-701(4), MCA, the statute that specifically deals with the issue of whether a worker is entitled to TTD benefits after the worker is terminated while working in a modified position. The loophole that Respondent claims to have found if a worker begins modified duty before he receives TTD benefits does not exist. The stipulated facts do not show that Petitioner's termination was for “disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment.” Since Petitioner's physical restrictions precluded him from returning to his time-of-injury job and employment with similar physical requirements, and since he was not at MMI, Petitioner is entitled to TTD benefits for the time period at issue.

COMING SOON

Hensley v. Montana State Fund, MTWCC 2013-3235
(Cross Motions for Summary Judgement)

Constitutionality of -703's denial of impairment award to claimant who has a Class I impairment and no wage loss.

SHEA'S TOP FIVE

(And One Shea-Era Supremes)



SHEA'S TOP 5
(And One Shea Era Supremes)

*American Zurich Ins. Co. v. Montana Thirteenth
Judicial Dist. Court*

2012 MT 61, 364 Mont. 299, 280 P.3d 240

SHEA'S TOP 5
(And One Shea Era Supremes)

Liberty Northwest Ins. Corp. v. Montana State Fund
(In re: Claim of Gary Mitchell)
2008 MTWCC 54 – Affirmed 2009 MT 386

SHEA'S TOP 5
(And One Shea Era Supremes)

Montana State Fund v. Grande
2011 MTWCC 15 – Affirmed 2012 MT 67

SHEA'S TOP 5
(And One Shea Era Supremes)

Clapham v. Twin City Fire Insurance Company

2012 MTWCC 27

SHEA'S TOP 5
(And One Shea Era Supremes)

Malcomson v. Liberty Northwest
2013 MTWCC 21 – Affirmed 2011 MT 49

SHEA'S TOP 5
(And One Shea Era Supremes)

Hopkins v. Uninsured Employers Fund
2010 MTWCC 9



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